

**SUPPLEMENTAL**

**DEPOSITION OF WALLACE HUNTER**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

DAVID DAVIS,

 COPY

Plaintiff,

VS.

CASE NO. 3:06-CV-0054-VPM

CITY OF PHENIX CITY, ALABAMA,

et al.,

**Defendants.**

1

12

13

7

15

16

37

10

10

卷八

DEPOSITION OF WALLACE HUNTER, taken pursuant to stipulation and agreement before Shannon M. Williams, Certified Court Reporter and Commissioner for the State of Alabama at Large, in the offices of City Hall, 601 12th Street, Phenix City, Alabama, on Tuesday, November 6, 2007, commencing at approximately 10:00 a.m. EST.

\* \* \* \* \*

1 APPEARANCES

2 FOR THE PLAINTIFF:

3 THOMAS A. WOODLEY  
4 Woodley & McGillivary  
1125 15th Street N.W.  
Suite 400  
5 Washington, D.C. 20005

6 FOR THE DEFENDANTS:

7 JAMES P. GRAHAM, JR.  
8 712 13th Street  
P.O. Box 3380  
9 Phenix City, Alabama 36868-3380

10 JAMES R. MCKOON, JR.  
McKoon & Associates  
11 925 Broad Street  
P.O. Box 3220  
12 Phenix City, Alabama 36868-3220

13  
14 ALSO PRESENT:

15 Cole Dugan  
16 David Davis  
H.H. Roberts

17 EXAMINATION INDEX

18 BY MR. WOODLEY  
19 BY MR. MCKOON

4  
51

1 STIPULATIONS

2 It is hereby stipulated and agreed by and  
3 between counsel representing the parties that the  
4 deposition of WALLACE HUNTER is taken pursuant to  
5 the Federal Rules of Civil Procedure and that said  
6 deposition may be taken before Shannon M. Williams,  
7 Certified Court Reporter and Commissioner for the  
8 State of Alabama at Large, without the formality of  
9 a commission; that objections to questions other  
10 than objections as to the form of the questions need  
11 not be made at this time but may be reserved for a  
12 ruling at such time as the deposition may be offered  
13 in evidence or used for any other purpose as  
14 provided for by the Federal Rules of Civil  
15 Procedure.

16 It is further stipulated and agreed by and  
17 between counsel representing the parties in this  
18 case that said deposition may be introduced at the  
19 trial of this case or used in any manner by either  
20 party hereto provided for by the Federal Rules of  
21 Civil Procedure.

22 \* \* \* \* \*

23  
24  
25

1                   WALLACE HUNTER

2                   The witness, having first been duly sworn  
3 or affirmed to speak the truth, the whole truth and  
4 nothing but the truth, testified as follows:

5                   EXAMINATION

6 BY MR. WOODLEY:

7                   Q. Good morning, Chief Hunter. This is a  
8 continuation of your original deposition in this  
9 lawsuit. And I think you recall that my name is Tom  
10 Woodley, and I'm the lead counsel representing  
11 Mr. David Davis in this lawsuit against the City,  
12 against yourself, and also against Mr. Roberts.

13                  Let me go through again some preliminaries, as  
14 I did in your first deposition, just to make sure  
15 that you and I are on the same wavelength. I'm  
16 going to be asking a number of questions of you this  
17 morning, and we expect you to give full and complete  
18 and truthful answers. Do you understand that?

19                  A. Yes, sir.

20                  Q. And, of course, you have again been sworn  
21 under oath, so you are obligated to give true  
22 answers. Do you understand that?

23                  A. Yes.

24                  Q. If at any time you don't hear or understand  
25 one of my questions, please stop me immediately and

1 I will be more than happy to repeat or rephrase that  
2 question. Do you understand that?

3 A. Yes, sir.

4 Q. I'm going to invite your attention to some  
5 of the exhibits that are in this binder in front of  
6 you, as we did in the first session of your  
7 deposition. Mr. McKoon has a full set of these  
8 exhibits as we go through them in the depositions  
9 today and tomorrow.

10 And the first exhibit, if you would turn the  
11 page on that, Chief Hunter, this is the Notice of  
12 Deposition which we attorneys served on the other  
13 side and on Mr. McKoon indicating the schedule and  
14 areas that we wanted to cover in these depositions.  
15 And you have been designated by the city defendant  
16 in this case as what we lawyers call a Rule 30(b)(6)  
17 witness to give knowledgeable and/or authoritative  
18 testimony in certain subject matter areas. Do you  
19 understand that?

20 A. Yes, sir.

21 Q. In looking at this Exhibit 1, the notice of  
22 deposition, I'm going to go through the several  
23 areas in which the city has appointed you as its  
24 witness and representative under Rule 30(b)(6). And  
25 the first subject matter area would be in paragraph

1 five of this Notice of Deposition, and you can turn  
2 to that. I'm going to read it into the record, and  
3 I would like you to read it to yourself as well.

4 Paragraph five states as follows: "All  
5 actions, correspondence, emails, notes, notices,  
6 grievances, appeals, warnings, counseling forms,  
7 reprimands, disciplinary actions and other documents  
8 which related in any way to the adoption,  
9 implementation, application, and enforcement of  
10 ASOP-12 of the city's fire department."

11 Do you see where it says that?

12 A. Yes, sir.

13 Q. So are you prepared today to give informed  
14 testimony on behalf of the city on that subject  
15 matter area?

16 A. Yes, sir.

17 Q. Okay. The next area would be paragraph six  
18 of the Notice of Deposition which states as  
19 follows: "All actions, memoranda, correspondence,  
20 e-mails, notes, notices, grievances, appeals,  
21 warnings, reprimands, disciplinary actions, and  
22 other documents which relate in any way to employees  
23 of the city's fire department following the "chain  
24 of command" with regard to any communications in  
25 writing or verbal with the media and with city

1 council members."

2 Do you see where it says that?

3 A. Yes, sir.

4 Q. And are you prepared today to give  
5 authoritative and knowledgeable testimony on behalf  
6 of the city on that subject matter area?

7 A. Yes, sir.

8 Q. Paragraph nine on the next page, Chief  
9 Hunter, says as follows: "All facts, memoranda,  
10 correspondence, e-mails, notes, notices, and other  
11 documents which relate in any way to information  
12 obtained by defendant Wallace Hunter that the  
13 plaintiff and other city employees have the  
14 constitutional First Amendment right of free  
15 expression."

16 Do you see where it says that?

17 A. Yes, sir.

18 Q. And you are also prepared to give  
19 authoritative testimony on that subject today on  
20 behalf the City?

21 A. Yes, sir.

22 Q. And, lastly, paragraph 10 which provides as  
23 follows: "All facts, memoranda, correspondence,  
24 e-mails, notes, notices, and other documents which  
25 relate in any way to information obtained by

1 defendant Wallace Hunter that the plaintiff and  
2 other city employees have the constitutional First  
3 Amendment right of free association."

4 Do you see where it says that?

5 A. Yes, sir.

6 Q. And are you also prepared to give  
7 knowledgeable and authoritative testimony on behalf  
8 of the city on that subject as well?

9 A. Yes, sir.

10 Q. Let me move on to Exhibit 35, which is a  
11 more recently provided document that the defendants  
12 gave to us in this case. Exhibit 35 appears to be a  
13 memorandum from Assistant Chief Hanson, H-A-N-S-O-N,  
14 to yourself, Chief Hunter, dated September 21,  
15 2005. And the re line is verbal counseling with De,  
16 D-E, Karl Taylorson. I want to ask you several  
17 questions about this document, but, initially, let  
18 me state to you, anytime that I ask you to review a  
19 document, take as much time as you need to read  
20 through it before you respond to my questions.

21 Do you understand that, Chief Hunter?

22 A. Yes, sir.

23 Q. Are you familiar with this memorandum  
24 addressed to yourself from Assistant Chief Hanson?

25 A. Yes, sir.

1           Q. Did he, in fact, give you this memorandum  
2 on or about its date of September 21, 2005?

3           A. Yes, sir.

4           Q. And what's your best recollection as to  
5 what Assistant Chief Hanson was doing on this  
6 subject when he apparently interviewed or  
7 interrogated Sergeant Karl Taylorson?

8           A. Could I finish reading it?

9           Q. Absolutely. That's true with all the  
10 documents.

11          Have you had a chance to read that completely?

12          A. Yes.

13          Q. I think my question was generally do you  
14 recall the circumstances which prompted Assistant  
15 Chief Hanson to apparently interview or interrogate  
16 Sergeant Karl Taylorson concerning this subject?

17          A. He was reminding Sergeant Taylorson of our  
18 requirements through our merit system before talking  
19 to the media.

20          Q. Did this situation grow out of the  
21 newspaper article that appeared in the Columbus  
22 Ledger-Enquirer on or about September 18, 2005, in  
23 which a number of firefighters were interviewed and  
24 quoted in the newspaper?

25          A. I believe so.

1           Q. And did you instruct or direct Assistant  
2 Chief Hanson to interview Karl Taylorson about that  
3 subject?

4           A. Yes, sir.

5           Q. Do you recall if Mr. Taylorson was quoted  
6 in that newspaper article about issues or policies  
7 affecting the fire department?

8           A. I believe so.

9           Q. As far as you know, Chief Hunter, are the  
10 statements contained in this memorandum from  
11 Assistant Chief Hanson to yourself true and  
12 accurate?

13          A. I believe so.

14          Q. You'll see in the second paragraph -- and  
15 let me quote it -- "Sergeant Taylorson was reminded  
16 of the "procedure for presentation of a grievance,"  
17 Section 15.02), outlined in the merit system. These  
18 guidelines are to be followed by everyone employed  
19 by the City of Phenix City."

20          Do you see where it says that?

21          A. Yes, sir.

22          Q. What is your understanding or recollection  
23 of the provision of Section 15.02 of the merit  
24 system rules and regulations?

25          A. It's a section that contains the steps for

1 a grievance.

2 Q. For a grievance?

3 A. I believe so.

4 Q. And is it your understanding that the  
5 reference here to that section in the merit system  
6 rules and regulations would require a city employee  
7 to first exhaust those grievance procedures in the  
8 merit system rules and regulations before the  
9 employee is authorized or permitted to talk to the  
10 media about an issue affecting the City?

11 A. I believe what he was doing here is giving  
12 him his avenue if he had a grievance.

13 Q. Okay. But is it your understanding of that  
14 section of the merit system rules and regulations  
15 that it is required by the city that before a city  
16 employee speaks with the media about any issue  
17 affecting the city or his department, that he first  
18 has to exhaust the grievance procedures consistent  
19 with the merit system rules and regulations?

20 A. I don't quite understand what you're  
21 saying. Say that again.

22 Q. Okay. Where I'm trying to go with this,  
23 just so you understand, is that, is there a  
24 preliminary requirement that before a city employee  
25 can talk to the media about any city related issue,

1       that individual employee has to exhaust the  
2       grievance procedures provided by the City?

3           A. No. We have designated people to talk to  
4       the media.

5           Q. And who would that be?

6           A. Myself and whoever I elect, designate as  
7       the person in fire prevention or whichever division  
8       that they are requesting information from.

9           Q. So do you consider yourself the  
10      spokesperson for the fire department to the media?

11          A. Yes, sir.

12          Q. Okay.

13          A. I'm one of them.

14          Q. You are one of them. And you have, as you  
15      understand it, the authority to designate another  
16      individual in the fire department to speak with the  
17      media, correct?

18          A. That is correct.

19          Q. Does anyone else in the fire department  
20      have the discretion or opportunity to speak to the  
21      media without your prior approval on any issues  
22      affecting the fire department?

23          A. As far as the media?

24          Q. Yes.

25          A. No, sir. We have designated personnel for

1       that. As far as if I'm not here, in my absence,  
2       someone would step in my place and that person would  
3       have that authority.

4           Q. Who would be the next person, if you are  
5       absent, to speak to the media about fire?

6           A. Presently, that would be Deputy Chief  
7       Hanson.

8           Q. Is there anyone else that -- as we're  
9       sitting here today, that has that authority to speak  
10      to the media?

11          A. It basically follows the chain. In his  
12       absence, it would be the next person that he  
13       designate, put in line to take care of those  
14       matters.

15          Q. But if tomorrow a rank and file firefighter  
16       currently employed by the City of Phenix City  
17       and its fire department spoke to the media on his  
18       own about issues affecting the fire department  
19       without your prior approval, would that be a  
20       violation of the merit system rules and regulations  
21       of the city?

22          A. Yes, sir.

23          Q. And you have been in the fire department  
24       for over 20 years; is that correct, Chief Hunter?

25          A. Yes, sir.

1           Q. How long, again, have you been the chief of  
2 the fire department?

3           A. At this time, two years and -- two years  
4 and six months, I believe.

5           Q. And then there was an earlier period of  
6 time where you were the acting chief, correct?

7           A. Yes, sir.

8           Q. In your experience in the city's fire  
9 department, do you know of any other situations,  
10 other than that newspaper article in September of  
11 2005, where firefighters have spoken to the media  
12 about any issues or matters affecting the fire  
13 department?

14          A. Are you asking under my tenure or someone  
15 else's tenure?

16          Q. In your 20 years plus within the fire  
17 department, do you know of any other firefighters  
18 who have spoken to the media other than the  
19 situation involving the September 2005 newspaper  
20 article?

21          A. I believe so.

22          Q. What's your recollection of that?

23          A. I believe someone has under -- at a  
24 different time.

25          Q. Who?

1           A. I remember some issues in 2001, but I can't  
2 recall. I wasn't the chief at that point in time.

3           Q. Do you remember the -- generally the  
4 issues?

5           A. Well, we had conflict in 2001.

6           Q. Conflict within the fire department?

7           A. That is correct.

8           Q. But over what subjects? If there was  
9 conflict, can you recall what the subjects were?

10          A. Basically, it was a matter of -- I guess  
11 under a different fire chief where we had, I guess,  
12 a different opinion in deputy chief and chief and  
13 some of the members of the fire department.

14          Q. But what was the subject? Was it  
15 staffing? Was it recruitment? Was it training?  
16 What was the subject?

17          A. I believe the chief was accused of taking  
18 products from a company.

19          Q. What was his name?

20          A. Rodney Blankenship.

21          Q. And after that situation, did he step down  
22 from his position?

23          A. I believe so, yes, sir.

24          Q. And you say that that subject appeared in  
25 the newspaper?

1           A. Yes, sir.

2           Q. And were firefighters interviewed and  
3 quoted on that subject?

4           A. I believe some were.

5           Q. Do you remember who?

6           A. I remember them talking to Chief Doster.  
7 And I can't recall everybody they talked to, but  
8 they talked to some people.

9           Q. The firefighters who spoke to the media on  
10 that occasion, were they subject to any discipline  
11 or retaliation of any kind?

12          A. During that time, sir, with -- I wasn't the  
13 chief. And it was so chaotic around here, I  
14 don't -- I'm not privy to know what all went on at  
15 that particular time.

16          Q. So you don't have any information or  
17 recollection as to whether or not there might have  
18 been any disciplinary action on that subject?

19          A. At that point in time, I wasn't chief.

20          Q. Okay. So the answer is no, you don't have  
21 any information then; is that correct?

22          MR. MCKOON: On what? Doesn't have any  
23 information on what?

24          Q. On whether or not the individuals who spoke  
25 to the media during that period of time were subject

1 to any discipline or retaliation by the city or the  
2 department?

3 A. I don't know exactly what went on then as  
4 far as everything that went on, so I couldn't really  
5 say was it or was it not. I believe --

6 Q. What --

7 MR. MCKOON: I don't know if you want this  
8 on the record or not, but they filed a lawsuit  
9 claiming that the reason they were terminated  
10 was because they were being retaliated -- was  
11 for retaliation for speaking out.

12 Q. And when you say "they," who is "they"; do  
13 you recall?

14 MR. MCKOON: Dennis Duty and Randy Doster.

15 Q. When you have been employed by the fire  
16 department, other than your tenure as the chief,  
17 have you ever spoken to the media about issues  
18 affecting the fire department?

19 A. No, sir.

20 Q. Now, going back to Exhibit 35, which again  
21 is this memorandum from Assistant Chief Hanson to  
22 yourself dated September 21, 2005, it says in the  
23 second paragraph, last sentence, he -- and this  
24 refers to Sergeant Taylorson -- he had -- and I  
25 believe this is a typo. I think there should be the

1 word "not" in there. Would you agree with that?  
2 "He had not received nor requested permission." Is  
3 it -- do you think that's a typo in the word not?

4 A. It could be. And then it's the way he  
5 speaks sometimes, I guess.

6 Q. Is that the way Assistant Chief Hanson  
7 speaks?

8 A. Depends on how people -- sometimes people  
9 speak. It look like a typo to me.

10 Q. I think in context it probably should have  
11 the word not in there, so unless Mr. McKoon  
12 objects --

13 MR. MCKOON: I'll agree with that.

14 Q. Let me quote it again. "He" -- again  
15 referring to Sergeant Taylorson -- "had not received  
16 nor requested permission from any fire department  
17 supervisors to speak with a member of the news media  
18 concerning issues within the fire department."

19 As far as you know, Chief Hunter, is that an  
20 accurate statement?

21 A. He hadn't requested any permission from  
22 myself, so I guess so. No one else had informed me  
23 that he requested permission.

24 Q. And, again, just so the record is clear  
25 here in the deposition, is it your understanding as

1       the chief of the fire department for the city, and  
2       the Rule 30(b)(6) witness for the city, that it is  
3       required by the merit system rules and regulations  
4       of the city that a firefighter have prior permission  
5       from the city or the fire department before he or  
6       she speaks with the media concerning issues within  
7       the fire department?

8           A. I believe so.

9           Q. Next, later on at the bottom of this  
10      memorandum, it says that Assistant Chief Hanson has  
11      advised Sergeant Taylorson that the city "would not  
12      put up with another episode of speaking to the media  
13      without prior approval."

14      Do you see where it says that?

15      A. Yes, sir.

16      Q. Do you have any idea what Assistant Chief  
17      Hanson was referring to when he said the city was  
18      just not going to put up with that again if  
19      Taylorson talked to the media about the fire  
20      department?

21      A. Basically, he was telling him that he had  
22      violated something without getting permission and  
23      that he was -- he was basically counseling him this  
24      time because he should have known what steps to take  
25      and that, I guess, the next time he would be written

1 up.

2 Q. Okay. The next time, as you put it,  
3 written up, he would be subject to discipline?

4 A. Subject to discipline.

5 Q. And possibly the next time Taylorson spoke  
6 to the media, when you say "he" would be subject to  
7 discipline, would that possibly include termination  
8 of his employment as well?

9 A. It depends on how his record stands.

10 Q. Well, speaking of his record, I notice that  
11 this -- apparently this counseling form, as it's  
12 titled, was going to be put in Sergeant Taylorson's  
13 personnel file. Is that your understanding as well?

14 A. That is correct.

15 Q. What's the purpose of putting a counseling  
16 form like this in a firefighter's personnel file?

17 A. I guess so if something else ever occurred  
18 that if you had to come back and you was to ask me a  
19 question of had we given this person a chance or  
20 talked to him before, that paperwork would show that  
21 he had been talked to.

22 Q. So, in other words, a counseling form like  
23 this for a firefighter placed in his personnel file  
24 could be referred to and used again for future  
25 possible disciplinary action; is that correct?